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Brief Description:

Page and line numbering may vary depending on the printer used.

ELECTRONIC TRANSMITTAL

HB 2152 - H AMD
By Representative

Strike everything after the enacting clause and insert the following:

"**PART I - UNEMPLOYMENT COMPENSATION BENEFITS**

Sec. 1. RCW 50.04.030 and 1991 c 117 s 1 are each amended to read as follows:

(1) "Benefit year" with respect to each individual, means the fifty-two consecutive week period beginning with the first day of the calendar week in which the individual files an application for an initial determination and thereafter the fifty-two consecutive week period beginning with the first day of the calendar week in which the individual next files an application for an initial determination after the expiration of the individual's last preceding benefit year: PROVIDED, HOWEVER, That the foregoing limitation shall not be deemed to preclude the establishment of a new benefit year under the laws of another state pursuant to any agreement providing for the interstate combining of employment and wages and the interstate payment of benefits nor shall this limitation be deemed to preclude the commissioner from backdating an initial application at the request of the claimant either for the convenience of the department of employment security or for any other reason deemed by the commissioner to be good cause.

(2) An individual's benefit year shall be extended to be fifty-three weeks when at the expiration of fifty-two weeks the establishment of a new benefit year would result in the use of a quarter of wages in the new base year that had been included in the individual's prior base year.

(3)(a) No benefit year will be established unless it is determined that:

(i) The individual earned wages in "employment" in not less than six hundred eighty hours of the individual's base year((~~: PROVIDED,~~

~~HOWEVER, That~~)); or

(ii) Beginning with claims that have an effective date on or after January 4, 2004, the individual earned wages in "employment" in not less than six hundred eighty hours of the individual's base year and also earned wages in "employment" in at least two quarters of the individual's base year. If sections 9 and 10 of this act are not enacted by July 1, 2003, this subsection (3)(a)(ii) is null and void.

(b) A benefit year ((~~cannot~~)) may not be established if the base year wages include wages earned prior to the establishment of a prior benefit year unless the individual worked and earned wages since the last separation from employment immediately before the application for initial determination in the previous benefit year if the applicant was an unemployed individual at the time of application, or since the initial separation in the previous benefit year if the applicant was not an unemployed individual at the time of filing an application for initial determination for the previous benefit year, of not less than six times the weekly benefit amount computed for the individual's new benefit year.

(c) If an individual's prior benefit year was based on the last four completed calendar quarters, a new benefit year shall not be established until the new base year does not include any hours used in the establishment of the prior benefit year.

(4) If the wages of an individual are not based upon a fixed duration of time or if the individual's wages are paid at irregular intervals or in such manner as not to extend regularly over the period of employment, the wages for any week shall be determined in such manner as the commissioner may by regulation prescribe. Such regulation shall, so far as possible, secure results reasonably similar to those which would prevail if the individual were paid his or her wages at regular intervals.

Sec. 2. RCW 50.20.120 and 2002 c 149 s 4 are each amended to read as follows:

(1)(a) Subject to the other provisions of this title, benefits shall be payable to any eligible individual during the individual's benefit year in a maximum amount equal to the lesser of thirty times the weekly benefit amount ((~~(determined hereinafter)~~)), as determined in subsection (2) of this section, or one-third of the individual's base year wages under this title: PROVIDED, That as to any week

((~~beginning on and after March 31, 1981,~~)) which falls in an extended benefit period as defined in RCW 50.22.010(1), ((~~as now or hereafter amended,~~)) an individual's eligibility for maximum benefits in excess of twenty-six times his or her weekly benefit amount will be subject to the terms and conditions set forth in RCW 50.22.020((~~, as now or hereafter amended~~)).

(b) With respect to claims that have an effective date on or after January 4, 2004, benefits shall be payable to any eligible individual during the individual's benefit year in a maximum amount equal to the lesser of twenty-six times the weekly benefit amount, as determined in subsection (2) of this section, or one-third of the individual's base year wages under this title. If sections 9 and 10 of this act are not enacted by July 1, 2003, this subsection (1)(b) is null and void.

(2)(a) An individual's weekly benefit amount shall be an amount equal to one twenty-fifth of the average quarterly wages of the individual's total wages during the two quarters of the individual's base year in which such total wages were highest. The maximum and minimum amounts payable weekly shall be determined as of each June 30th to apply to benefit years beginning in the twelve-month period immediately following such June 30th. ((~~Except as provided in RCW 50.20.125,~~))

(b) The maximum amount payable weekly shall be:

(i) Except as provided in (b)(ii) of this subsection, seventy percent of the "average weekly wage" for the calendar year preceding such June 30th.

(ii) Beginning with claims that have an effective date on or after January 4, 2004, the maximum amount payable weekly shall be sixty-six and two-thirds percent of the "average weekly wage" for the calendar year preceding such June 30th or four hundred ninety-six dollars, whichever is greater. If sections 9 and 10 of this act are not enacted by July 1, 2003, this subsection (2)(b) is null and void.

(c) The minimum amount payable weekly shall be fifteen percent of the "average weekly wage" for the calendar year preceding such June 30th. If any weekly benefit, maximum benefit, or minimum benefit amount computed herein is not a multiple of one dollar, it shall be reduced to the next lower multiple of one dollar.

(3)(a) In addition to the amount payable weekly under subsection (2) of this section, an individual shall be paid a dependent allowance of ten dollars weekly for: (i) Each child who is a dependent of the

individual for federal income tax exemptions; and (ii) each child for whom the individual owes child support obligations and for whom no other person is receiving dependent allowances under this subsection. The dependent allowance may not exceed thirty dollars weekly.

(b) For the purposes of this subsection:

(i) "Child" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis who is: (A) Under eighteen years of age; (B) eighteen years of age or older and incapable of self-care because of a mental or physical disability; or (C) under twenty-four years of age, enrolled as a student, and regularly attending classes, or is between two successive academic years or terms, at an institution of higher education.

(ii) "Institution of higher education" means an educational institution that: (A) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate; (B) is legally authorized to provide a program of education beyond high school; (C) provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, or offers a program of training to prepare students for gainful employment in a recognized occupation; and (D) is a public or other nonprofit institution.

(4) The sum of the amount payable weekly under subsection (2) of this section and the dependent allowance payable weekly under subsection (3) of this section may not exceed the maximum amount payable weekly specified in subsection (2) of this section.

Sec. 3. RCW 50.04.293 and 1993 c 483 s 1 are each amended to read as follows:

(1) "Misconduct" means an employee's act or failure to act in willful disregard of his or her employer's interest where the effect of the employee's act or failure to act is to harm the employer's business.

(2) "Gross misconduct" means a felony or gross misdemeanor by the employee that is connected with the employee's work which results in harm to the employer's business.

Sec. 4. RCW 50.20.065 and 1993 c 483 s 11 are each amended to read

as follows:

(1) An individual who has been discharged from his or her work because of ((~~a felony or gross misdemeanor~~)) gross misconduct of which he or she has been convicted, or has admitted committing to a competent authority, ((~~and that is connected with his or her work~~)) shall have all hourly wage credits based on that employment or six hundred eighty hours of wage credits, whichever is greater, canceled.

(2) The employer shall notify the department of such an admission or conviction, not later than six months following the admission or conviction.

(3) The claimant shall disclose any conviction of the claimant of a work-connected felony or gross misdemeanor occurring in the previous two years to the department at the time of application for benefits.

(4) All benefits that are paid in error based on wage/hour credits that should have been removed from the claimant's base year are recoverable, notwithstanding RCW 50.20.190 or 50.24.020 or any other provisions of this title.

NEW SECTION. **Sec. 5.** A new section is added to chapter 50.20 RCW to read as follows:

An individual is disqualified for benefits for any day during which he or she is incarcerated in any federal, state, or municipal penal institution, jail, medical facility, public or private hospital, or in any other place because of a criminal violation of a federal, state, or municipal law or ordinance. For purposes of this section, "incarceration" includes any time spent in the custody of law enforcement authorities upon adjudication or conviction by a court of competent jurisdiction.

NEW SECTION. **Sec. 6.** A new section is added to chapter 50.20 RCW to read as follows:

An otherwise eligible individual may not be denied benefits for any week because the individual is available for, seeks, applies for, or accepts only work of at least fifteen hours per week by reason of the application of RCW 50.20.010(3), 50.20.015, 50.20.080, or 50.22.020(1) relating to availability for work and active search for work, or failure to apply for or refusal to accept suitable work.

Sec. 7. RCW 50.20.150 and 1970 ex.s. c 2 s 7 are each amended to

read as follows:

(1) The applicant for initial determination, his most recent employing unit as stated by the applicant, and any other interested party which the commissioner by regulation prescribes, shall, if not previously notified within the same continuous period of unemployment, be given notice promptly in writing that an application for initial determination has been filed and such notice shall contain the reasons given by the applicant for his last separation from work. If, during his benefit year, the applicant becomes unemployed after having accepted subsequent work, and reports for the purpose of reestablishing his eligibility for benefits, a similar notice shall be given promptly to his then most recent employing unit as stated by him, or to any other interested party which the commissioner by regulation prescribes.

(2) Each base year employer shall be promptly notified of the filing of any application for initial determination which may result in a charge to his account.

(3) Any employer who receives a notice under this section and has information which might make the applicant ineligible or disqualify the applicant for benefits shall report this information to the employment security department at the address indicated on the notice within ten days of the date the notice was mailed. If the employer reports this information to the department more than ten days after the date the notice was mailed:

(a) The applicant may not be determined to be ineligible or disqualified based on the information for a claim period compensated before receipt of the information by the department; and

(b) The applicant is entitled to a rebuttable presumption of eligibility for a claim period after receipt of the information by the department.

Sec. 8. RCW 50.20.240 and 2002 c 8 s 3 are each amended to read as follows:

(1) To ensure that following the initial application for benefits, an individual is actively engaged in searching for work, ((~~effective July 1, 1999,~~)) the employment security department shall implement a job search monitoring program. Except for those individuals with employer attachment or union referral, individuals who qualify for unemployment compensation under RCW 50.20.050(2)(d), and individuals in commissioner-approved training, an individual who has received five or

more weeks of benefits under this title must provide evidence of seeking work, as directed by the commissioner or the commissioner's agents, for each week beyond five in which a claim is filed. The evidence must demonstrate contacts with at least three employers per week or documented in-person job search activity at the local reemployment center. In developing the requirements for the job search monitoring program, the commissioner or the commissioner's agents shall utilize an existing advisory committee having equal representation of employers and workers.

(2) During any extended benefit period as defined in RCW 50.22.010, the department may: (a) Suspend the job search monitoring program under subsection (1) of this section; and (b) shift funding and staff from job search monitoring activities to eligibility determination and benefit payment activities.

PART II - UNEMPLOYMENT COMPENSATION CONTRIBUTIONS

Sec. 9. RCW 50.29.020 and 2002 c 149 s 6 and 2002 c 8 s 4 are each reenacted and amended to read as follows:

(1)(a) An experience rating account shall be established and maintained for each employer, except employers as described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, taxable local government employers as described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, based on existing records of the employment security department.

(b) Benefits paid to ((~~any~~)) an eligible individual((~~s~~)) shall be charged to the experience rating accounts of each of such individual's employers during the individual's base year in the same ratio that the wages paid by each employer to the individual during the base year bear to the wages paid by all employers to that individual during that base year, except as otherwise provided in this section.

(c) Benefits paid to an eligible individual shall be charged to the experience rating account of only the individual's separating employer if the individual qualifies for benefits under: (i) RCW 50.20.050(2)(a) and became unemployed after having worked and earned wages in the bona fide work; or (ii) RCW 50.20.050(3).

(2) The legislature finds that certain benefit payments, in whole or in part, should not be charged to the experience rating accounts of

employers except those employers described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, taxable local government employers described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, as follows:

(a) Benefits paid to any individuals later determined to be ineligible shall not be charged to the experience rating account of any contribution paying employer.

(b) Benefits paid to an individual filing under the provisions of chapter 50.06 RCW shall not be charged to the experience rating account of any contribution paying employer only if:

(i) The individual files under RCW 50.06.020(1) after receiving crime victims' compensation for a disability resulting from a nonwork-related occurrence; or

(ii) The individual files under RCW 50.06.020(2).

(c) Benefits paid which represent the state's share of benefits payable as extended benefits defined under RCW 50.22.010(6) shall not be charged to the experience rating account of any contribution paying employer.

(d) In the case of individuals who requalify for benefits under RCW 50.20.050 or 50.20.060, benefits based on wage credits earned prior to the disqualifying separation shall not be charged to the experience rating account of the contribution paying employer from whom that separation took place.

(e) Individuals who qualify for benefits under RCW 50.20.050(2)(d) shall not have their benefits charged to the experience rating account of any contribution paying employer.

(f) In the case of individuals identified under RCW 50.20.015, benefits paid with respect to a calendar quarter, which exceed the total amount of wages earned in the state of Washington in the higher of two corresponding calendar quarters included within the individual's determination period, as defined in RCW 50.20.015, shall not be charged to the experience rating account of any contribution paying employer.

(3)(a) A contribution-paying base year employer, not otherwise eligible for relief of charges for benefits under this section, may receive such relief if the benefit charges result from payment to an individual who:

(i) Last left the employ of such employer voluntarily for reasons not attributable to the employer;

(ii) Was discharged for misconduct connected with his or her work not a result of inability to meet the minimum job requirements;

(iii) Is unemployed as a result of closure or severe curtailment of operation at the employer's plant, building, work site, or other facility. This closure must be for reasons directly attributable to a catastrophic occurrence such as fire, flood, or other natural disaster; or

(iv) Continues to be employed on a regularly scheduled permanent part-time basis by a base year employer and who at some time during the base year was concurrently employed and subsequently separated from at least one other base year employer. Benefit charge relief ceases when the employment relationship between the employer requesting relief and the claimant is terminated. This subsection does not apply to shared work employers under chapter 50.60 RCW.

(b) The employer requesting relief of charges under this subsection must request relief in writing within thirty days following mailing to the last known address of the notification of the valid initial determination of such claim, stating the date and reason for the separation or the circumstances of continued employment. The commissioner, upon investigation of the request, shall determine whether relief should be granted.

Sec. 10. RCW 50.29.025 and 2003 c 4 (SHB 1832) s 1 are each amended to read as follows:

The contribution rate for each employer subject to contributions under RCW 50.24.010 shall be determined under this section.

(1) A fund balance ratio shall be determined by dividing the balance in the unemployment compensation fund as of the September 30th immediately preceding the rate year by the total remuneration paid by all employers subject to contributions during the second calendar year preceding the rate year and reported to the department by the following March 31st. The division shall be carried to the fourth decimal place with the remaining fraction, if any, disregarded. The fund balance ratio shall be expressed as a percentage.

(2) The interval of the fund balance ratio, expressed as a percentage, shall determine which tax schedule in subsection (5) of this section shall be in effect for assigning tax rates for the rate year, except that during rate year 2004 tax schedule B shall be in effect unless a lower tax schedule is determined to be in effect by the

interval of the fund balance ratio. The intervals for determining the effective tax schedule shall be:

Interval of the Fund Balance Ratio Expressed as a Percentage	Effective Tax Schedule
((~~2.90~~)) 2.86 and above	AA
((~~2.10 to 2.89~~)) 2.06 to 2.85	A
((~~1.70 to 2.09~~)) 1.66 to 2.05	B
1.40 to ((~~1.69~~)) 1.65	C
1.00 to 1.39	D
0.70 to 0.99	E
Less than 0.70	F

(3) An array shall be prepared, listing all qualified employers in ascending order of their benefit ratios. The array shall show for each qualified employer: (a) Identification number; (b) benefit ratio; (c) taxable payrolls for the four calendar quarters immediately preceding the computation date and reported to the department by the cut-off date; (d) a cumulative total of taxable payrolls consisting of the employer's taxable payroll plus the taxable payrolls of all other employers preceding him or her in the array; and (e) the percentage equivalent of the cumulative total of taxable payrolls.

(4) Each employer in the array shall be assigned to one of twenty rate classes according to the percentage intervals of cumulative taxable payrolls set forth in subsection (5) of this section: PROVIDED, That if an employer's taxable payroll falls within two or more rate classes, the employer and any other employer with the same benefit ratio shall be assigned to the lowest rate class which includes any portion of the employer's taxable payroll.

(5)(a) Except as provided in RCW 50.29.026, the contribution rate for each employer in the array shall be the rate specified in the following tables for the rate class to which he or she has been assigned, as determined under subsection (4) of this section, within the tax schedule which is to be in effect during the rate year:

((~~Percent of Cumulative Taxable Payrolls~~ ~~Schedules of Contributions Rates for Effective Tax Schedule~~

~~From~~	~~To~~	~~Rate Class~~	~~AA~~	~~A~~	~~B~~	~~C~~	~~D~~	~~E~~	~~F~~
~~0.00~~	~~5.00~~	~~1~~	~~0.47~~	~~0.47~~	~~0.57~~	~~0.97~~	~~1.47~~	~~1.87~~	~~2.47~~
~~5.01~~	~~10.00~~	~~2~~	~~0.47~~	~~0.47~~	~~0.77~~	~~1.17~~	~~1.67~~	~~2.07~~	~~2.67~~
~~10.01~~	~~15.00~~	~~3~~	~~0.57~~	~~0.57~~	~~0.97~~	~~1.37~~	~~1.77~~	~~2.27~~	~~2.87~~
~~15.01~~	~~20.00~~	~~4~~	~~0.57~~	~~0.73~~	~~1.11~~	~~1.51~~	~~1.90~~	~~2.40~~	~~2.98~~
~~20.01~~	~~25.00~~	~~5~~	~~0.72~~	~~0.92~~	~~1.30~~	~~1.70~~	~~2.09~~	~~2.59~~	~~3.08~~
~~25.01~~	~~30.00~~	~~6~~	~~0.91~~	~~1.11~~	~~1.49~~	~~1.89~~	~~2.29~~	~~2.69~~	~~3.18~~
~~30.01~~	~~35.00~~	~~7~~	~~1.00~~	~~1.29~~	~~1.69~~	~~2.08~~	~~2.48~~	~~2.88~~	~~3.27~~
~~35.01~~	~~40.00~~	~~8~~	~~1.19~~	~~1.48~~	~~1.88~~	~~2.27~~	~~2.67~~	~~3.07~~	~~3.47~~
~~40.01~~	~~45.00~~	~~9~~	~~1.37~~	~~1.67~~	~~2.07~~	~~2.47~~	~~2.87~~	~~3.27~~	~~3.66~~
~~45.01~~	~~50.00~~	~~10~~	~~1.56~~	~~1.86~~	~~2.26~~	~~2.66~~	~~3.06~~	~~3.46~~	~~3.86~~
~~50.01~~	~~55.00~~	~~11~~	~~1.84~~	~~2.14~~	~~2.45~~	~~2.85~~	~~3.25~~	~~3.66~~	~~3.95~~
~~55.01~~	~~60.00~~	~~12~~	~~2.03~~	~~2.33~~	~~2.64~~	~~3.04~~	~~3.44~~	~~3.85~~	~~4.15~~
~~60.01~~	~~65.00~~	~~13~~	~~2.22~~	~~2.52~~	~~2.83~~	~~3.23~~	~~3.64~~	~~4.04~~	~~4.34~~
~~65.01~~	~~70.00~~	~~14~~	~~2.40~~	~~2.71~~	~~3.02~~	~~3.43~~	~~3.83~~	~~4.24~~	~~4.54~~
~~70.01~~	~~75.00~~	~~15~~	~~2.68~~	~~2.90~~	~~3.21~~	~~3.62~~	~~4.02~~	~~4.43~~	~~4.63~~
~~75.01~~	~~80.00~~	~~16~~	~~2.87~~	~~3.09~~	~~3.42~~	~~3.81~~	~~4.22~~	~~4.53~~	~~4.73~~
~~80.01~~	~~85.00~~	~~17~~	~~3.27~~	~~3.47~~	~~3.77~~	~~4.17~~	~~4.57~~	~~4.87~~	~~4.97~~
~~85.01~~	~~90.00~~	~~18~~	~~3.67~~	~~3.87~~	~~4.17~~	~~4.57~~	~~4.87~~	~~4.97~~	~~5.17~~
~~90.01~~	~~95.00~~	~~19~~	~~4.07~~	~~4.27~~	~~4.57~~	~~4.97~~	~~5.07~~	~~5.17~~	~~5.37~~
~~95.01~~	~~100.00~~	~~20~~	~~5.40~~	~~5.40~~	~~5.40~~	~~5.40~~	~~5.40~~	~~5.40~~	~~5.40~~))

Percent of Cumulative Taxable Payrolls — Schedules of Contributions Rates for Effective Tax Schedule

From	To	Rate Class	AA	A	B	C	D	E	F
0.00	5.00	1	0.54	0.55	0.63	1.00	1.50	1.90	2.50
5.01	10.00	2	0.54	0.55	0.82	1.25	1.70	2.10	2.70
10.01	15.00	3	0.60	0.60	1.05	1.45	1.80	2.30	2.90
15.01	20.00	4	0.70	0.80	1.17	1.57	1.93	2.43	3.01
20.01	25.00	5	0.72	0.92	1.30	1.70	2.09	2.59	3.08
25.01	30.00	6	0.91	1.03	1.44	1.89	2.29	2.69	3.18
30.01	35.00	7	1.00	1.17	1.61	2.08	2.48	2.88	3.27
35.01	40.00	8	1.19	1.35	1.79	2.27	2.67	3.07	3.47
40.01	45.00	9	1.37	1.52	1.97	2.47	2.87	3.27	3.66
45.01	50.00	10	1.56	1.69	2.15	2.66	3.06	3.46	3.86
50.01	55.00	11	1.84	1.95	2.33	2.85	3.25	3.66	3.95
55.01	60.00	12	2.03	2.12	2.51	3.04	3.44	3.85	4.15
60.01	65.00	13	2.22	2.29	2.69	3.23	3.64	4.04	4.34
65.01	70.00	14	2.40	2.47	2.87	3.43	3.83	4.24	4.54
70.01	75.00	15	2.64	2.68	3.05	3.62	4.02	4.43	4.63
75.01	80.00	16	2.81	2.87	3.25	3.81	4.22	4.53	4.73

80.01	85.00	17	3.27	3.47	3.77	4.17	4.57	4.87	4.97
85.01	90.00	18	3.67	3.87	4.17	4.57	4.87	4.97	5.17
90.01	95.00	19	4.10	4.30	4.60	5.00	5.10	5.20	5.40
95.01	100.00	20							
		20A	5.40	5.40	5.40	5.45	5.50	5.55	5.60
		20B	5.40	5.45	5.50	5.55	5.60	5.65	5.70
		20C	5.50	5.55	5.60	5.65	5.70	5.75	5.80
		20D	5.60	5.65	5.70	5.75	5.80	5.85	5.90
		20E	5.70	5.75	5.80	5.85	5.90	5.95	6.00

(b) Employers assigned to rate class 20 shall be assigned to one of the rate classes 20A through E as follows:

(i) Employers with a benefit ratio of less than 0.054000 shall be assigned to rate class 20A;

(ii) Employers with a benefit ratio of at least 0.054000 but less than 0.063000 shall be assigned to rate class 20B;

(iii) Employers with a benefit ratio of at least 0.063000 but less than 0.068000 shall be assigned to rate class 20C;

(iv) Employers with a benefit ratio of at least 0.068000 but less than 0.075000 shall be assigned to rate class 20D; and

(v) Employers with a benefit ratio of 0.075000 or higher shall be assigned to rate class 20E.

(6) The contribution rate for each employer not qualified to be in the array shall be as follows:

(a) Employers who do not meet the definition of "qualified employer" by reason of failure to pay contributions when due shall be assigned a contribution rate two-tenths higher than that in rate class 20E for the applicable rate year, except employers who have an approved agency-deferred payment contract by September 30 of the previous rate year. If any employer with an approved agency-deferred payment contract fails to make any one of the succeeding deferred payments or fails to submit any succeeding tax report and payment in a timely manner, the employer's tax rate shall immediately revert to a contribution rate two-tenths higher than that in rate class 20E for the applicable rate year; and

(b) For all other employers not qualified to be in the array, the contribution rate shall be a rate equal to the average industry rate as determined by the commissioner, plus fifteen percent; however, the rate may not be less than one percent or more than the rate in rate class 20E for the applicable rate year. Assignment of employers by the commissioner to industrial classification, for purposes of this section, shall be in accordance with established classification

practices found in the ((~~"Standard Industrial Classification Manual"~~)) North American industry classification system issued by the federal office of management and budget ((~~to the third digit provided in the standard industrial classification code, or in the North American industry classification system code~~)).

Sec. 11. RCW 50.29.062 and 1996 c 238 s 1 are each amended to read as follows:

Predecessor and successor employer contribution rates shall be computed in the following manner:

(1) If the successor is an employer, as defined in RCW 50.04.080, at the time of the transfer, its contribution rate shall remain unchanged for the remainder of the rate year in which the transfer occurs. From and after January 1 following the transfer, the successor's contribution rate for each rate year shall be based on its experience with payrolls and benefits including the experience of the acquired business or portion of a business from the date of transfer, as of the regular computation date for that rate year.

(2) For transfers before January 1, 2004, if the successor is not an employer at the time of the transfer, it shall pay contributions at the lowest rate determined under either of the following:

(a)(i) For transfers before January 1, 1997, the contribution rate of the rate class assigned to the predecessor employer at the time of the transfer for the remainder of that rate year and continuing until the successor qualifies for a different rate in its own right;

(ii) For transfers on or after January 1, 1997, the contribution rate of the rate class assigned to the predecessor employer at the time of the transfer for the remainder of that rate year. Any experience relating to the assignment of that rate class attributable to the predecessor is transferred to the successor. Beginning with the January 1 following the transfer, the successor's contribution rate shall be based on the transferred experience of the acquired business and the successor's experience after the transfer; or

(b) The contribution rate equal to the average industry rate as determined by the commissioner, but not less than one percent, and continuing until the successor qualifies for a different rate in its own right. Assignment of employers by the commissioner to industrial classification, for purposes of this subsection, must be in accordance with established classification practices found in the "Standard

Industrial Classification Manual" issued by the federal office of management and budget to the third digit provided in the standard industrial classification code, or in the North American industry classification system code.

(3) For transfers before January 1, 2004, if the successor is not an employer at the time of the transfer and simultaneously acquires the business or a portion of the business of two or more employers in different rate classes, its rate from the date the transfer occurred until the end of that rate year and until it qualifies in its own right for a new rate, shall be the highest rate class applicable at the time of the acquisition to any predecessor employer who is a party to the acquisition, but not less than one percent.

(4) For transfers on or after January 1, 2004, the following applies if the successor is not an employer at the time of the transfer:

(a) Except as provided otherwise in this subsection, the successor shall pay contributions at the contribution rate of the rate class assigned to the predecessor employer at the time of the transfer for the remainder of that rate year. On and after January 1st following the transfer, the successor's contribution rate for each rate year shall be based on its experience with payrolls and benefits including the experience of the acquired business or portion of the business from the date of transfer.

(b) If the successor simultaneously acquires the business or a portion of the business of two or more employers in different rate classes, the successor's contribution rate from the date the transfer occurred until the end of that rate year shall be the rate in the highest rate class applicable at the time of the acquisition to any predecessor employer who is a party to the acquisition, but not less than one percent. On and after January 1st following the transfer, the successor's contribution rate for each rate year shall be based on its experience with payrolls and benefits including the experience of the acquired businesses from the date of transfer.

(c)(i) If there is a substantial continuity of ownership, control, or management by the successor of the business of the predecessor, the successor shall pay contributions at the contribution rate determined for the predecessor employer at the time of the transfer and continuing until such time as the successor satisfies the requirements of a "qualified employer" under RCW 50.29.010.

(ii) For purposes of this subsection:

(A) "Substantial continuity of ownership" means that a shareholder, officer, or other owner of a legal or equitable interest in the predecessor employer, or the spouse or a person within the first degree of consanguinity of affinity of the shareholder, officer, or other owner: (I) Is a shareholder, officer, or other owner of a legal or equitable interest in the successor; or (II) holds an option to purchase a legal or equitable interest in the successor.

(B) "Substantial continuity of control" exists if one or more persons, entities, or other organizations controlling the business remain in control of the business after an acquisition or change in form. Evidence of continuity of control shall include, but not be limited to: (I) Changes of an individual proprietorship to a corporation, partnership, limited liability company, association, or estate; (II) a partnership to an individual proprietorship, corporation, limited liability company, association, estate, or the addition, deletion, or change of partners; (III) a limited liability company to an individual proprietorship, partnership, corporation, association, estate, or to another limited liability company; and (IV) a corporation to an individual proprietorship, partnership, limited liability company, association, estate, or to another corporation or from any form to another form.

(5) The contribution rate on any payroll retained by a predecessor employer shall remain unchanged for the remainder of the rate year in which the transfer occurs.

((~~(5)~~)) (6) In all cases, from and after January 1 following the transfer, the predecessor's contribution rate for each rate year shall be based on its experience with payrolls and benefits as of the regular computation date for that rate year including the experience of the acquired business or portion of business up to the date of transfer: PROVIDED, That if all of the predecessor's business is transferred to a successor or successors, the predecessor shall not be a qualified employer until it satisfies the requirements of a "qualified employer" as set forth in RCW 50.29.010.

Sec. 12. RCW 50.12.220 and 1987 c 111 s 2 are each amended to read as follows:

(1) If an employer fails to file in a timely and complete manner a report required by RCW 50.12.070 ((~~as now or hereafter amended~~)) or the

rules adopted pursuant thereto, the employer shall be subject to a minimum penalty of ten dollars per violation.

(2) If contributions are not paid on the date on which they are due and payable as prescribed by the commissioner, there shall be assessed a penalty of five percent of the amount of the contributions for the first month or part thereof of delinquency; there shall be assessed a total penalty of ten percent of the amount of the contributions for the second month or part thereof of delinquency; and there shall be assessed a total penalty of twenty percent of the amount of the contributions for the third month or part thereof of delinquency. No penalty so added shall be less than ten dollars. These penalties are in addition to the interest charges assessed under RCW 50.24.040.

(3) If any part of the delinquency for which an assessment is made is due to fraud or an intent to evade or defeat any contributions payable under this title, including any violation of RCW 50.12.070, a penalty of fifty percent of the amount of the contributions shall be added to the assessment. This penalty is in addition to other penalties provided by law.

(4) If any part of the delinquency for which an assessment is made is due to an intent to evade the successorship provisions of RCW 50.29.062, the department shall assign to the employer, and to any business found to be promoting the evasion of such provisions, the maximum tax rate provided for in RCW 50.29.025(5) for five calendar quarters, beginning with the calendar quarter in which the intent to evade such provisions is found.

(5) Penalties shall not accrue on contributions from an estate in the hands of a receiver, executor, administrator, trustee in bankruptcy, common law assignee, or other liquidating officer subsequent to the date when such receiver, executor, administrator, trustee in bankruptcy, common law assignee, or other liquidating officer qualifies as such, but contributions accruing with respect to employment of persons by a receiver, executor, administrator, trustee in bankruptcy, common law assignee, or other liquidating officer shall become due and shall be subject to penalties in the same manner as contributions due from other employers.

((~~(4)~~)) (6) Where adequate information has been furnished to the department and the department has failed to act or has advised the employer of no liability or inability to decide the issue, penalties shall be waived by the commissioner. Penalties may also be waived for

good cause if the commissioner determines that the failure to timely file reports or pay contributions was not due to the employer's fault.

((~~(5)~~)) (7) Any decision to assess a penalty as provided by this section shall be made by the chief administrative officer of the tax branch or his or her designee.

((~~(6)~~)) (8) Nothing in this section shall be construed to deny an employer the right to appeal the assessment of any penalty. Such appeal shall be made in the manner provided in RCW 50.32.030.

PART III - MISCELLANEOUS

Sec. 13. RCW 50.22.140 and 2002 c 149 s 1 are each amended to read as follows:

(1) The employment security department is authorized to pay training benefits under RCW 50.22.150, but may not obligate expenditures beyond the limits specified in this section or as otherwise set by the legislature. For the fiscal year ending June 30, 2000, the commissioner may not obligate more than twenty million dollars for training benefits. For the two fiscal years ending June 30, 2002, the commissioner may not obligate more than sixty million dollars for training benefits. Any funds not obligated in one fiscal year may be carried forward to the next fiscal year. For each fiscal year beginning after June 30, 2002, the commissioner may not obligate more than twenty million dollars annually in addition to any funds carried forward from previous fiscal years. The department shall develop a process to ensure that expenditures do not exceed available funds and to prioritize access to funds when again available.

(2) After June 30, 2002, in addition to the amounts that may be obligated under subsection (1) of this section, the commissioner may obligate up to thirty-four million dollars for training benefits under RCW 50.22.150 for individuals in the aerospace industry assigned ((~~the standard industrial classification code "372" or~~)) the North American industry classification system code "336411" whose claims are filed before January 5, 2003. The funds provided in this subsection must be fully obligated for training benefits for these individuals before the funds provided in subsection (1) of this section may be obligated for training benefits for these individuals. Any amount of the funds specified in this subsection that is not obligated as permitted may not be carried forward to any future period.

Sec. 14. RCW 50.22.150 and 2002 c 149 s 2 are each amended to read as follows:

(1) Subject to availability of funds, training benefits are available for an individual who is eligible for or has exhausted entitlement to unemployment compensation benefits and who:

(a) Is a dislocated worker as defined in RCW 50.04.075;

(b) Except as provided under subsection (2) of this section, has demonstrated, through a work history, sufficient tenure in an occupation or in work with a particular skill set. This screening will take place during the assessment process;

(c) Is, after assessment of demand for the individual's occupation or skills in the individual's labor market, determined to need job-related training to find suitable employment in his or her labor market. Beginning July 1, 2001, the assessment of demand for the individual's occupation or skill sets must be substantially based on declining occupation or skill sets identified in local labor market areas by the local work force development councils, in cooperation with the employment security department and its labor market information division, under subsection (10) of this section;

(d) Develops an individual training program that is submitted to the commissioner for approval within sixty days after the individual is notified by the employment security department of the requirements of this section;

(e) Enters the approved training program by ninety days after the date of the notification, unless the employment security department determines that the training is not available during the ninety-day period, in which case the individual enters training as soon as it is available; and

(f) Is enrolled in training approved under this section on a full-time basis as determined by the educational institution, and is making satisfactory progress in the training as certified by the educational institution.

(2) Until June 30, 2002, the following individuals who meet the requirements of subsection (1) of this section may, without regard to the tenure requirements under subsection (1)(b) of this section, receive training benefits as provided in this section:

(a) An exhaustee who has base year employment in the aerospace industry assigned ((~~the standard industrial classification code "372" or~~)) the North American industry classification system code "336411";

(b) An exhaustee who has base year employment in the forest products industry, determined by the department, but including the industries assigned the ((~~major group standard industrial classification codes "24" and "26" or any~~)) equivalent codes in the North American industry classification system code, and the industries involved in the harvesting and management of logs, transportation of logs and wood products, processing of wood products, and the manufacturing and distribution of wood processing and logging equipment; or

(c) An exhaustee who has base year employment in the fishing industry assigned the ((~~standard industrial classification code "0912" or any~~)) equivalent codes in the North American industry classification system code.

(3) An individual is not eligible for training benefits under this section if he or she:

(a) Is a standby claimant who expects recall to his or her regular employer;

(b) Has a definite recall date that is within six months of the date he or she is laid off; or

(c) Is unemployed due to a regular seasonal layoff which demonstrates a pattern of unemployment consistent with the provisions of RCW 50.20.015. Regular seasonal layoff does not include layoff due to permanent structural downsizing or structural changes in the individual's labor market.

(4) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Educational institution" means an institution of higher education as defined in RCW 28B.10.016 or an educational institution as defined in RCW 28C.04.410, including equivalent educational institutions in other states.

(b) "Sufficient tenure" means earning a plurality of wages in a particular occupation or using a particular skill set during the base year and at least two of the four twelve-month periods immediately preceding the base year.

(c) "Training benefits" means additional benefits paid under this section.

(d) "Training program" means:

(i) An education program determined to be necessary as a prerequisite to vocational training after counseling at the educational

institution in which the individual enrolls under his or her approved training program; or

(ii) A vocational training program at an educational institution:

(A) That is targeted to training for a high demand occupation. Beginning July 1, 2001, the assessment of high demand occupations authorized for training under this section must be substantially based on labor market and employment information developed by local work force development councils, in cooperation with the employment security department and its labor market information division, under subsection (10) of this section;

(B) That is likely to enhance the individual's marketable skills and earning power; and

(C) That meets the criteria for performance developed by the work force training and education coordinating board for the purpose of determining those training programs eligible for funding under Title I of P.L. 105-220.

"Training program" does not include any course of education primarily intended to meet the requirements of a baccalaureate or higher degree, unless the training meets specific requirements for certification, licensing, or for specific skills necessary for the occupation.

(5) Benefits shall be paid as follows:

(a)(i) Except as provided in (a)(iii) of this subsection, for exhaustees who are eligible under subsection (1) of this section, the total training benefit amount shall be fifty-two times the individual's weekly benefit amount, reduced by the total amount of regular benefits and extended benefits paid, or deemed paid, with respect to the benefit year; or

(ii) For exhaustees who are eligible under subsection (2) of this section, for claims filed before June 30, 2002, the total training benefit amount shall be seventy-four times the individual's weekly benefit amount, reduced by the total amount of regular benefits and extended benefits paid, or deemed paid, with respect to the benefit year; or

(iii) For exhaustees eligible under subsection (1) of this section from industries listed under subsection (2)(a) of this section, for claims filed on or after June 30, 2002, but before January 5, 2003, the total training benefit amount shall be seventy-four times the individual's weekly benefit amount, reduced by the total amount of

regular benefits and extended benefits paid, or deemed paid, with respect to the benefit year.

(b) The weekly benefit amount shall be the same as the regular weekly amount payable during the applicable benefit year and shall be paid under the same terms and conditions as regular benefits. The training benefits shall be paid before any extended benefits but not before any similar federally funded program.

(c) Training benefits are not payable for weeks more than two years beyond the end of the benefit year of the regular claim.

(6) The requirement under RCW 50.22.010(10) relating to exhausting regular benefits does not apply to an individual otherwise eligible for training benefits under this section when the individual's benefit year ends before his or her training benefits are exhausted and the individual is eligible for a new benefit year. These individuals will have the option of remaining on the original claim or filing a new claim.

(7)(a) Except as provided in (b) of this subsection, individuals who receive training benefits under this section or under any previous additional benefits program for training are not eligible for training benefits under this section for five years from the last receipt of training benefits under this section or under any previous additional benefits program for training.

(b) With respect to claims that are filed before January 5, 2003, an individual in the aerospace industry assigned ((~~the standard industrial code "372" or~~)) the North American industry classification system code "336411" who received training benefits under this section, and who had been making satisfactory progress in a training program but did not complete the program, is eligible, without regard to the five-year limitation of this section and without regard to the requirement of subsection (1)(b) of this section, if applicable, to receive training benefits under this section in order to complete that training program. The total training benefit amount that applies to the individual is seventy-four times the individual's weekly benefit amount, reduced by the total amount of regular benefits paid, or deemed paid, with respect to the benefit year in which the training program resumed and, if applicable, reduced by the amount of training benefits paid, or deemed paid, with respect to the benefit year in which the training program commenced.

(8) An individual eligible to receive a trade readjustment

allowance under chapter 2 of Title II of the Trade Act of 1974, as amended, shall not be eligible to receive benefits under this section for each week the individual receives such trade readjustment allowance. An individual eligible to receive emergency unemployment compensation, so called, under any federal law, shall not be eligible to receive benefits under this section for each week the individual receives such compensation.

(9) All base year employers are interested parties to the approval of training and the granting of training benefits.

(10) By July 1, 2001, each local work force development council, in cooperation with the employment security department and its labor market information division, must identify occupations and skill sets that are declining and occupations and skill sets that are in high demand. For the purposes of RCW 50.22.130 through 50.22.150 and section 9, chapter 2, Laws of 2000, "high demand" means demand for employment that exceeds the supply of qualified workers for occupations or skill sets in a labor market area. Local work force development councils must use state and locally developed labor market information. Thereafter, each local work force development council shall update this information annually or more frequently if needed.

(11) The commissioner shall adopt rules as necessary to implement this section.

Sec. 15. RCW 50.44.053 and 2001 c 99 s 2 are each amended to read as follows:

(1) The term "reasonable assurance," as used in RCW 50.44.050, means a written, verbal, or implied agreement that the employee will perform services in the same capacity during the ensuing academic year or term as in the first academic year or term. A person shall not be deemed to be performing services "in the same capacity" unless those services are rendered under the same terms or conditions of employment in the ensuing year as in the first academic year or term.

(2) An individual who is tenured or holds tenure track status is considered to have reasonable assurance, unless advised otherwise by the college. For the purposes of this section, tenure track status means a probationary faculty employee having an opportunity to be reviewed for tenure.

(3) In the case of community and technical colleges assigned ((~~the standard industrial classification code 8222 or~~)) the North American

industry classification system code 611210 for services performed in a principal administrative, research, or instructional capacity, a person is presumed not to have reasonable assurance under an offer that is conditioned on enrollment, funding, or program changes. It is the college's burden to provide sufficient documentation to overcome this presumption. Reasonable assurance must be determined on a case-by-case basis by the total weight of evidence rather than the existence of any one factor. Primary weight must be given to the contingent nature of an offer of employment based on enrollment, funding, and program changes.

NEW SECTION. **Sec. 16.** The following acts or parts of acts are each repealed:

(1) RCW 50.20.125 (Maximum amount payable weekly) and 2002 c 149 s 3; and

(2) RCW 50.29.045 (Contribution rate--Insolvency surcharge) and 2002 c 149 s 9.

NEW SECTION. **Sec. 17.** If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state.

NEW SECTION. **Sec. 18.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 19.** (1) Section 9 of this act applies to benefits charged to the experience rating accounts of employers with respect to claims that have an effective date on or after January 4, 2004.

(2) Section 10 of this act applies to rate years beginning on or

after January 1, 2004.

NEW SECTION. **Sec. 20.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003."

Correct the title.